



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name

Edward W. Smith, D.O.

Respondent Name

New Hampshire Insurance Company

MFDR Tracking Number

M4-16-2816-01

Carrier's Austin Representative

Box Number 19

MFDR Date Received

May 13, 2016

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "NO PAYMENT OR EOB RECEIVED"

Amount in Dispute: \$650.00

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "Reimbursement has not been provided to Edward Smith DO for date of service 10-1-15 due to a third party settlement."

Response Submitted by: Broadspire

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
October 1, 2015	Designated Doctor Examination	\$650.00	\$650.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Administrative Code §102.4 establishes rules for non-Commission communications.
3. 28 Texas Administrative Code §133.2 defines terms used in the medical billing and processing chapter.
4. 28 Texas Administrative Code §133.10 sets out the requirements for a complete medical bill.
5. 28 Texas Administrative Code §133.200 sets out the insurance carrier's procedures for receipt of medical bills.
6. 28 Texas Administrative Code §133.210 sets out the procedures for medical documentation.
7. 28 Texas Administrative Code §133.240 sets out the procedure for medical bill processing by the workers' compensation insurance carrier.

8. 28 Texas Administrative Code §134.204 sets out the fee guidelines for division-specific services from March 1, 2008 until September 1, 2016.

Defenses Raised Prior to the Request for Medical Fee Dispute Resolution

Documentation does not support that the insurance carrier raised any defenses prior to the request for medical fee dispute resolution.

Issues

1. Did New Hampshire Insurance Company (NHIC) reduce or deny the disputed services not later than the 45th day after receiving the medical bill?
2. Is Edward W. Smith, D.O. entitled to reimbursement for the disputed services?

Findings

1. Edward W. Smith, D.O. is seeking reimbursement for a designated doctor examination, requested by NHIC, to determine maximum medical improvement and impairment rating performed on October 1, 2015. Dr. Smith contends that he did not receive payment or an explanation of benefits for the services in question.

According to Texas Labor Code Sec. 408.027(b), NHIC was required to pay, reduce, or deny the disputed services not later than the 45th day after it received the medical bill from Dr. Smith. Corresponding 28 Texas Administrative Code §133.240(a) also required NHIC to take **final action** by issuing an explanation of benefits not later than the statutorily-required 45th day. 28 Texas Administrative Code §133.2(6) defines final action as follows:

(6) Final action on a medical bill—

- (A) sending a payment that makes the total reimbursement for that bill a fair and reasonable reimbursement in accordance with §134.1 of this title (relating to Medical Reimbursement); and/or
- (B) denying a charge on the medical bill.

Submission of a medical bill is subject to determination as put forth in 28 Texas Administrative Code §102.4, which states that:

- (h) Unless the great weight of evidence indicates otherwise, written communications shall be deemed to have been sent on
 - (1) the date received, if sent by fax, personal delivery or electronic transmission or,
 - (2) the date postmarked if sent by mail via United States Postal Service regular mail, or, if the postmark date is unavailable, the later of the signature date on the written communication or the date it was received minus five days. If the date received minus five days is a Sunday or legal holiday, the date deemed sent shall be the next previous day which is not a Sunday or legal holiday...
- (p) For purposes of determining the date of receipt for non-commission written communications, unless the great weight of evidence indicates otherwise, the Commission shall deem the received date to be five days after the date mailed via United States Postal Service regular mail; or the date faxed or electronically transmitted.

The following evidence supports the written statement from Dr. Smith that the medical bill for the services in dispute was received by NHIC on or about October 18, 2015 and February 24, 2016:

- Copy of a Certificate of Mailing from the United States Postal Service postmarked October 13, 2015.
- Copy of a CMS-1500 date-stamped as received on February 24, 2016 by Broadspire, agent of NHIC.

The evidence supports that NHIC received a medical bill for the services in dispute on or about October 18, 2015 and February 24, 2016. NHIC was not relieved of its requirement to pay, reduce, or deny the disputed services not later than the 45th day after it received the medical bill from Dr. Smith, in accordance with Texas Labor Code Sec. 408.027(b). When the insurance carrier receives a medical bill, it is obligated to take the following actions pursuant to 28 Texas Administrative Code §133.240:

- (a) An insurance carrier **shall take final action** [emphasis added] after conducting bill review on a complete medical bill...**not later than the 45th day** [emphasis added] after the insurance carrier received a complete medical bill...
- (e) The insurance carrier **shall send the explanation of benefits** [emphasis added] in accordance with the elements required by §133.500 and §133.501 of this title...The explanation of benefits shall be sent to:
 - (1) the health care provider when the insurance carrier makes payment or denies payment on a medical bill...

Submitted documentation includes a document titled "Provider Request Letter." In this letter, Broadspire, agent of NHIC, states that it is unable to process the bill for the following reason: "ICD-10 Code – Required for Date of Service greater than or equal to 10/1/2015." 28 Texas Administrative Code §133.2(4) defines a complete medical bill as, "A medical bill that contains all required fields as set forth in the billing instructions for the appropriate form specified in §133.10 of this chapter..." Review of the submitted documentation finds that Dr. Smith submitted a complete medical bill in accordance with 28 Texas Administrative Code §133.10. Therefore, Broadspire's rejection of the medical bill is not supported.

Broadspire argued in its position statement on behalf of NHIC that "reimbursement has not been provided to Edward Smith DO for date of service 10-1-15 due to a third party settlement." If it was Broadspire's intention to reduce reimbursement for the disputed services based on a third party settlement, Broadspire was obligated to issue an explanation of benefits presenting this reason for reduction. NHIC's failure to timely issue an explanation of benefits to Dr. Smith creates a waiver of the defense that Broadspire raised in its response to medical fee dispute resolution under 28 Texas Administrative Code §133.307(d)(2)(F):

The [carrier's] response shall address only those denial reasons presented to the requestor prior to the date the request for MFDR was filed with the division and the other party. Any new denial reasons or defenses raised shall not be considered in the review...

Absent any evidence that NHIC raised defenses that conform with the requirements of Title 28, Part 2, Chapter 133, Subchapter C, the division concludes that the defenses presented in Broadspire's position statement shall not be considered for review because those assertions constitute new defenses pursuant to 28 Texas Administrative Code §133.307(d)(2)(F).

- 2. Per 28 Texas Administrative Code §134.204(j)(3), "The following applies for billing and reimbursement of an MMI evaluation... (C) An examining doctor, other than the treating doctor, shall bill using CPT Code 99456. Reimbursement shall be \$350." The submitted documentation supports that the requestor performed an evaluation of Maximum Medical Improvement. Therefore, the MAR for this examination is \$350.00.

Per 28 Texas Administrative Code §134.204(j)(4), "The following applies for billing and reimbursement of an IR evaluation. ... (C)(ii) The MAR for musculoskeletal body areas shall be as follows. ... (II) If full physical evaluation, with range of motion, is performed: (-a-) \$300 for the first musculoskeletal body area." The submitted documentation supports that the requestor provided an impairment rating, which included a musculoskeletal body part, and performed a full physical evaluation with range of motion of the left leg. Therefore, the MAR for this examination is \$300.00.

The total MAR for the services in dispute is \$650.00. This amount is recommended.

Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$650.00.

ORDER

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$650.00, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

Authorized Signature

_____ Signature	Laurie Garnes _____ Medical Fee Dispute Resolution Officer	February 8, 2017 _____ Date
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YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.